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Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey State Board of Optometrists
124 Halsey Street, 6th Floor, Newark, NJ 07102



ANNE MILGRAM
Attorney General

LAWRENCE DEMARZO
Acting Director

April 14, 2008

By Certified and Regular Mail

Michael A. Todd, O.D.
1716 Crowfoot Lane
Williamstown, N.J. 08094

Mailing Address:
P.O. Box 45012
Newark, NJ 07101
(973) 504-6440

Re: Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Dr. Todd:

This letter is to advise you that the New Jersey State Board of Optometrists ("Board") has had an opportunity to review information alleging that a un-licensed individual was dispensing eyeglasses, adjusting frames, measuring bifocal height, and recommending types of lenses at the Optical Room located in Rio Grande, New Jersey. Specifically, the information reviewed revealed that Bob Butcher was the un-licensed individual who was working at the Optical Room and engaging in activities that required a license as an optician/ ophthalmic dispenser or which could be performed if the facility was owned and operated by a licensed New Jersey Optometrists who was on the premises at the time the activities occurred and delegated them to the individual as required by regulation of the Board.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that you permitted an un-licensed individual to be employed at an office providing optometric services on at least four days a month each month during 2007 when neither a New Jersey licensed Optometrists or a licensed NJ Ophthalmologist was present at the location constituting improper delegation to ancillary personnel in violation of N.J.A.C. 13: 38-2.11 and N.J.S.A. 45:1-21(h),

Dr. Todd appeared at an investigative inquiry of the Board on January 16, 2008 with his attorney, James Schragger. Dr. Todd testified that he is the owner of the Optical Room with locations in Abescon, New Jersey and Rio Grande, New Jersey. The Abescon, NJ location is co-owned with Collin Yoder who is a licensed ophthalmic dispenser in New Jersey. Mr. Yoder functions as a licensed ophthalmic dispenser only at the Absecon, NJ location. Dr. Todd confirmed that his hours at the Absecon, NJ location are Mondays, Tuesdays and Wednesdays 9:00 a.m. to 5:00 p.m., every other Thursday, 9:00 a.m. to 7:00 p.m. and Saturdays 9:00 a.m. to 1:00 p.m. Mr. Yoder shares the same hours.

Dr. Todd further testified that at the Optical Room located in Rio Grande, NJ he employs Dr. Carl Hirschhorn, O.D. on Mondays and Fridays from 9:00 a.m. to 5:00 p.m. Every other Wednesday of the month an ophthalmologists, Dr. Brian Altman, M.D. sees patients at this location from 9:00 a.m. to 5:00 p.m. and every other Thursday of the month, Dr. Todd sees patients from 9:00 a.m. to 5:00 p.m. He also employs a receptionist at this

location and a technician/frame stylist, Robert Butcher. Mr. Butcher has been employed at this location during all of 2007 and does not hold any professional licenses. Mr. Butcher's hours at this location were Mondays, Wednesdays, Thursday and Fridays from 9:00 a.m. to 5:00 p.m. The Rio Grande location was closed on Saturdays. Dr. Todd testified that Mr. Butcher's job description included assisting patients with frame selection, making appointments, insurance billing, and dispensing glasses and measuring bifocal heights when the optometrists or ophthalmologists were present. However, Dr. Todd did testify that while the staff was instructed to set up dispensing when the optometric physicians and ophthalmologist was in the office it was possible that Mr. Butcher might adjust frames of an individual who may walk in to the location during regular business hours. Dr. Todd also testified that he had employed a licensed ophthalmic dispenser at this location who left his employ over a year ago. Therefore, the location did not have a licensed ophthalmic dispenser for all of 2007.

Dr. Todd also testified that he hired a licensed ophthalmic dispenser on January 14, 2008 to work at the Rio Grande location and that Mr. Butcher's employment position was terminated as of that date.

The Board's review has determined that it appears that Mr. Butcher engaged in the dispensing of eyeglasses and possibly other delegated activities at least four days a month during 2007 when a licensed optometrists or licensed ophthalmologist was not present in the office to allow Mr. Butcher to engage in activities that required direct supervision. Your failure to provide proper supervision during these specific periods of time constitute an improper delegation pursuant to the regulation at N.J.A.C. 13:38-2.11 in violation of N.J.S.A. 45:1-21(h).

At this juncture, the Board has preliminarily concluded that the above violation is sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of formal disciplinary proceedings, should you consent to:

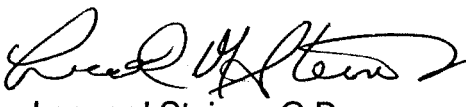
1. A formal reprimand for your violation of N.J.S.A. 45:1-21(h) and of N.J.A.C. 13:38-2.11 which requires direct supervision by an Optometrist on-site when delegating certain activities to ancillary personnel.
2. Pay costs incurred by the Board by certified check or money order in the amount of \$131.00 which represents investigative costs as set forth in the attached certification.
3. Pay a civil penalty in the amount of \$2,500.00, for the violation of N.J.S.A. 45:1-21(h) to be paid immediately upon the signing of this offer of settlement. Payment is to be made by certified check or money order and made payable to the New Jersey State Board of Optometrists and sent to P.O. Box 45012, Newark, New Jersey 07101.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

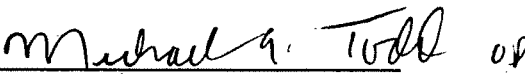
In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of formal disciplinary action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order, requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact your attorney, James Scragger, Esquire and have him direct your concerns to Deputy Attorney General Carmen A. Rodriguez, who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of formal disciplinary action.

NEW JERSEY STATE BOARD OF
OPTOMETRISTS

By: 
Leonard Steiner, O.D.
President

ACKNOWLEDGMENT: I, Michael A. Todd, O.D., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to the terms of the settlement offer, including a public reprimand, payment of costs to the Board in the amount of \$ 131.00 and payment of a civil penalty in the amount of \$2500 for a total amount of \$2,631.00 that is due upon signing of this acknowledgment


Michael A. Todd, O.D.

Dated: 4/23/08

cc: James Schragger, Esq.
Carmen A. Rodriguez, Deputy Attorney General